



1 Hausz BILL NO. 926  
 2 INTRODUCED BY Hoffman  
 3 BY REQUEST OF THE DEPARTMENT OF HEALTH  
 4 AND ENVIRONMENTAL SCIENCES

5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR VOLUNTARY  
 7 FILING OF PERFORMANCE BONDS FOR PROJECTS AND ACTIVITIES  
 8 AUTHORIZED BY WATER POLLUTION DISCHARGE PERMITS; AMENDING  
 9 SECTIONS 75-5-401 AND 75-5-402, MCA; AND PROVIDING EFFECTIVE  
 10 DATES."  
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STATEMENT OF INTENT

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 13 A statement of intent is required for this bill in order  
 14 to provide guidance to the board of health and environmental  
 15 sciences for the adoption of rules concerning the  
 16 reclamation of sites disturbed by construction,  
 17 modification, or operation of disposal systems for which a  
 18 performance bond or other surety is voluntarily filed by a  
 19 permit applicant or permittee pursuant to [section 3]. The  
 20 board's rules should establish criteria that the department  
 21 of health and environmental sciences shall apply in  
 22 determining the requirements that are necessary for  
 23 individual permittees to achieve acceptable site reclamation  
 24 on a case-by-case basis and to prevent pollution of state  
 25 waters. The board's rules should also establish procedures

1 governing the release of bonds and other surety, including  
 2 provisions for releasing a portion of a bond or other surety  
 3 in situations in which acceptable reclamation and prevention  
 4 of water pollution have been completed upon a portion of a  
 5 site where a permitted pollutant discharge project has  
 6 operated or a permitted activity has occurred.

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8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 **Section 1.** Section 75-5-401, MCA, is amended to read:

10 "75-5-401. Board rules for permits. (1) The board shall  
11 adopt rules:

12 (a) governing application for permits to discharge  
 13 sewage, industrial wastes, or other wastes into state  
 14 waters, including rules requiring the filing of plans and  
 15 specifications relating to the construction, modification,  
 16 or operation of disposal systems;

17 (b) governing the issuance, denial, modification, or  
 18 revocation of permits.

19 (2) The rules shall allow the issuance or continuance  
 20 of a permit only if the department finds that operation  
 21 consistent with the limitations of the permit will not  
 22 result in pollution of any state waters, except that the  
 23 rules may allow the issuance of a temporary permit under  
 24 which pollution may result if the department insures that  
 25 such permit contains a compliance schedule designed to meet



1 all applicable effluent standards and water quality  
2 standards in the shortest reasonable period of time.

3 (3) The rules shall provide that the department may  
4 revoke a permit if the department finds that the holder of  
5 the permit has violated its terms, unless the department  
6 also finds that the violation was accidental and  
7 unforeseeable and that the holder of the permit corrected  
8 the condition resulting in the violation as soon as was  
9 reasonably possible.

10 (4) The board may adopt rules governing reclamation of  
11 sites disturbed by construction, modification, or operation  
12 of disposal systems for which a bond is voluntarily filed by  
13 a permittee pursuant to [section 3], including rules for the  
14 establishment of criteria and procedures governing release  
15 of the bond or other surety and release of portions of a  
16 bond or other surety."

17 **Section 2.** Section 75-5-402, MCA, is amended to read:

18 "75-5-402. Duties of department. The department shall:

19 (1) issue, suspend, revoke, modify, or deny permits to  
20 discharge sewage, industrial wastes, or other wastes into  
21 state waters, consistently with rules made by the board;

22 (2) examine plans and other information needed to  
23 determine whether a permit should be issued or suggest  
24 changes in plans as a condition to the issuance of a permit;

25 (3) clearly specify in any permit any limitations

1 imposed as to the volume, strength, and other significant  
2 characteristics of the waste to be discharged; and

3 (4) establish as conditions to the issuance of permits  
4 for which a performance bond or other surety is filed under  
5 [section 3] certain reclamation requirements sufficient to  
6 prevent pollution of state waters during and after operation  
7 of the project or activity for which a permit is issued."

8 **NEW SECTION. Section 3.** Voluntary filing of  
9 performance bond -- terms -- hearing. (1) A person who holds  
10 or has applied for a permit pursuant to 75-5-401 may  
11 voluntarily file a performance bond or other surety with the  
12 department for an amount sufficient to enable the state to  
13 reclaim the land disturbed by the project or activity  
14 authorized by the permit in accordance with all permit  
15 requirements and as needed to prevent pollution of state  
16 waters.

17 (2) If the department determines that the bonding level  
18 does not represent the present cost of reclaiming the  
19 disturbed land according to the reclamation requirements  
20 specified in the permit and the present cost of preventing  
21 pollution of state waters, the department shall notify the  
22 permittee and the permittee may modify the amount of the  
23 bond to accurately reflect the present cost.

24 (3) The department may not release all or any portion  
25 of a performance bond or other surety filed pursuant to this

1 section until reclamation of the disturbed land has been  
2 completed to the satisfaction of the department and the  
3 department has determined that pollution of state waters has  
4 not occurred. The department may initiate bond forfeiture  
5 proceedings if the permittee fails to satisfactorily reclaim  
6 the disturbed land or prevent pollution of state waters.

7 (4) The department may not release a bond or other  
8 surety filed pursuant to this section until the public has  
9 been provided an opportunity for a hearing.

10 NEW SECTION. **Section 4.** Codification instruction.  
11 [Section 3] is intended to be codified as an integral part  
12 of Title 75, chapter 5, part 4, and the provisions of Title  
13 75, chapter 5, part 4, apply to [section 3].

14 NEW SECTION. **Section 5.** Effective dates. (1) [Section  
15 3 and this section] are effective on passage and approval.

16 (2) [Sections 1, 2, and 4] are effective October 1,  
17 1991.

-End-

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-2-  
 THIRD READING  
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 CONSENT CALENDAR

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